IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8561 OF 2003

Shri Shishir Vasant Sindekar)
C/o. Sindekar & Co., 480/8,)
Sindekar Plaza, Gole Colony,)
Old Agra Road, Nashik-422 002.)... Petitioner.

Versus

1) Gokhale Education Society,)
through the Secretary, having)
their office at Principal)
T. A. Kulkarni Vidya Nagar,)
Nashik - 422 005.)

2) B. Y. K. College of Commerce,)
through the Principal T. A.)
Kulkarni, Vidya Nagar, Nashik)
422 005.)

3) University of Pune,)
Through the Registrar,)
Ganeshkhind, Pune-411 007.)

4) The Joint Director of Higher)
and Technical Education,)
Pune Division, Pune.)

5) State of Maharashtra,)

through its Department of)
Higher and Technical)
Education, Mantralaya Annexe,)
Mumbai - 400 032. ...).... Respondents.

Mr. Mihir Desai for the Petitioner.

Mr. M. B. Mehere for Respondent Nos.1 and 2.

Mrs. M.G.Kulkarni with Mr. G.Kulkarni
for Respondent No.3.

Mr. S.R.Nargolkar, AGP for Respondent Nos.4 and 5.

CORAM : V.G. PALSHIKAR, and
V.R.KINGAONKAR, JJ.
DATED : 4TH APRIL, 2006.

JUDGMENT (Per : V.R.KINGAONKAR, J.):

By this petition, the Petitioner impugns Government Resolution dated 19th July 2003 and 2nd August, 2003 and seeks grant of approval as a permanent full time Lecturer in Economics with all consequential benefits including time sale of pay.

2. There is no dispute about the fact that the Petitioner is well qualified for appointment of

Lecturer in Economics since he is M.A. 1st Class in Economics and also has passed SET examination. He was appointed as a full time Lecturer in Economics by Respondent No.1 in its College - Respondent No.2 as per appointment order dated 10th August, 1994 for the academic year 1994-95. The initial appointment was on temporary basis. In the next year he was again interviewed for the post against leave vacancy in the open category and was appointed as such. He continued to be appointed as Lecturer in Economics for each educational year till 1999. In the year 1999-2000 he was selected by duly constituted Selection Committee for the post of full time Lecturer in clear vacancy available for open category, on probation for two years period, in another College of Respondent No.1 and was given appointment order dated 14th August, 1999.

3. The Petitioner’s case is that though he expected to be treated as confirmed from the year 2001 yet the post was again advertised by Respondent No.1. From time to time he was appointed against the reserved post till 2002-2003. He continued to be the employee as a full time Lecturer in Economics and has drawn the pay in time sale. In 2002, the Government issued a resolution allowing to fill up 2/3rd of total vacant

posts on contract basis on a consolidated salary for a fixed period. The Government Resolution was, however, stayed by a letter of Joint Director, Higher and Technical Education Department on 7th September, 2002. The Government vacated the stay order on 19th July, 2003 and directed appointment of Lecturers on contract basis on consolidated pay of Rs.8,000/- per month. The Respondent No.1 published an advertisement and called for applications to fill up the post on consolidated pay and on contract basis for a fixed tenure as per the Resolution of the Government. The Petitioner responded to the advertisement dated 27th September, 2003. He claimed that he is fully qualified and ought to have been continued in clear vacancy on time scale. His main prayer is to quash the Government Resolution dated 19th July, 2003 and 2nd August, 2003 and further direction to grant approval for his appointment as full time Lecturer in Economics. Hence the petition.

4. We have considered rival submissions of the learned Counsel for the parties. We have gone through the affidavit in reply and the relevant documents filed by the Petitioner. We may mention here that Respondent No.1 has recommended case of the Petitioner for approval of his appointment as Lecturer. The

recommendation letters dated 30th November, 2002 and 26th December, 2002 (Exhibits "S" and "T") purport to show that the Petitioner is working with the Educational Institution for more than 10 years and is well qualified for appointment as Lecturer. It is also manifestly clear that those posts i.e. of Lecturer in Economics and Lecturer in Commerce are out of 2/3rd vacant posts which the Government sanctioned previously to be filled.

5. The affidavit in reply filed by Respondent No.4 does not show any rationale for appointment of the Petitioner on contract basis after such a long duration of his service in the Institute. He has served in time scale and used to draw a monthly pay of Rs.13,500/-. So his appointment on contractual basis on consolidated pay of Rs.8,000/- per month is virtually amounts to reduction in the pay scale without any fault on his part. The Government Resolutions dated 19th July, 2003 and 2nd August, 2003 would show that a scheme is prepared for giving appointment even to retired teachers on consolidated pay. It also appears that the Scheme purports to allow filling up of the posts when the reserved category candidates are not available. In respect of the fresh candidates or retired teachers the scheme

for appointment on contractual basis may be equitable. However, it has no rationale in case of appointment of those who are already working with the Institute for considerable years. Their fate cannot be subjected to uncertainty for large number of years. They cannot be hanged on fire without any fault of theirs and particularly when they are found as eligible and meritworthy by the Institution continuously for so many years. It is illogical to push the Petitioner to accept contractual appointment on the same post, that too on a consolidate pay. This case stands on different footings from that of fresh candidates and retired Lecturers.

6. We are of the opinion that the Petitioner deserves regularisation of his appointment and the Respondent Nos.4 and 5 should be directed to give approval for such appointment. The University has no objection and the Institution also has no objection for grant of approval to the appointment of the Petitioner. The Respondent Nos.4 and 5 may consider case of the Petitioner by granting appropriate relaxation, if necessary, to the proposal for approval of the Petitioner’s appointment. Indeed, appointment of the Petitioner on contractual basis will cause discrimination between him and those placed like him

who are appointed in the time scale. It would amount to violation of the *"principles of equal work, equal pay"* and hence is violative of Article 14 of the Constitution. The Petitioner is entitled for same scale of pay like his co-workers who are appointed against the vacancies before the impugned Resolutions have been issued by the Government.

7. In the result, we allow the Petition and direct that Respondent Nos.4 and 5 shall grant proposal for appointment of the Petitioner and, if necessary, to relax the condition enumerated under the Government Resolution dated 19th July, 2003 and 2nd August, 2003, on the post of full time Lecturer in Economics in the time scale. The Petitioner will be entitled to benefits arising out of such appointment from 1st July, 2003 onwards. Rule made absolute in terms aforesaid. No order as to costs.

Sd/-

(V.G.PALSHIKAR, J.)

Sd/-

(V.R.KINGAONKAR, J.)